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HUMAN RIGHTS COMMITTEE

Forty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1258th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 July 1993, at 10 a.m.

Chairman: Mr. ANDO

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1258/Add.1.

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The meeting was called to order at 10.15 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued) (M/CCPR/1993/19) SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3) (continued)

1. The CHAIRMAN invited the Committee to turn its attention to a number of organizational questions that had arisen with regard to the submission and consideration of several periodic reports.

Second periodic report of Afghanistan

2. The CHAIRMAN said that Afghanistan had submitted its second periodic report (due in 1989) on 25 October 1992 and had then requested its withdrawal, citing the fact that it had been based entirely upon the old Constitution, which was to be replaced by a new Constitution at a date that the State party was unable to specify, and that it did not cover the period after 1991. With the Bureau's agreement, he had replied to the Ambassador of Afghanistan at Geneva that the Committee would defer consideration of the second periodic report of Afghanistan and would notify the State party whether it would be asking it to submit a new report to replace the document which Afghanistan wished to withdraw but which had been reproduced and translated in the working languages under the symbol CCPR/C/57/Add.5. He invited the members of the Committee to give their opinion on how to proceed in that regard.

3. Following an exchange of views in which Mr. POCAR, Mr. LALLAH, Mrs. HIGGINS, Mr. FRANCIS, Mrs. EVATT, Mr. PRADO VALLEJO, Mr. MAVROMMATIS, Mr. EL SHAFEI, Mr. AGUILAR URBINA and Miss CHANET took part, the CHAIRMAN said that it was the Committee's wish that the Secretariat should notify the State party that the second periodic report of Afghanistan would be considered by the Committee at its session of July 1994 (fifty-first session) and that the State party could, if it so wished, submit a report or additional information concerning the current period, either orally or in writing, it being understood that the written material should reach the Secretariat by mid-March 1994. If there was no objection, he would take it that that was the decision of the Committee.

4. It was so decided.

Initial report of Latvia

5. The CHAIRMAN said that the initial report submitted by Latvia was very short (five pages) and was accompanied by extracts from the Constitution. The State party had indicated that it could provide the Committee with additional information if it so desired. The Bureau recommended that the Committee should request such information and remind the State party that guidelines existed regarding the form and contents of initial reports from States parties (CCPR/C/5/Rev.1). He invited the members of the Committee to give their opinion on that recommendation.

6. Mrs. HIGGINS said that the Committee should emphasize the fact that the initial report received from Latvia did not correspond with what was requested in the guidelines and should allow the State party to supplement the report in a manner consistent with the guidelines.

7. Mr. HERNDL suggested that Latvia should be informed that the Committee hoped to receive additional information in writing so that the report would be in conformity with the guidelines. The practice of supplementing an incomplete report by providing information orally in the introductory statement during the meeting should not become a habit.

8. The CHAIRMAN said that, in the absence of further remarks, he would take it that the Committee intended to inform the State party that the initial report submitted was not adequate in the light of the Committee's guidelines and that the Committee was waiting for additional information pursuant to those guidelines.

9. It was so decided.

Second periodic report of Cyprus

10. The CHAIRMAN announced that Cyprus had finally submitted a periodic report (due in 1984) and had stated that it was its second and third periodic reports, as Bulgaria had done at the current session. For the Committee, however, that document was deemed to be the second periodic report of Cyprus and would be considered as such.

11. Mr. MAVROMMATIS warned against that type of decision, because the Committee might one day find itself totally unable to consider States party reports, given that it considered four or five reports per session and that there were about 140 States parties due to report every five years.

12. Mrs. HIGGINS, disagreeing, said that by accepting such an arrangement, which consisted in combining two reports, the Committee would be playing into the hands of States parties. Problems relating to the timetable for the consideration of reports would be taken up in due course, but in the meantime the Committee must remain faithful to its practice.

13. The CHAIRMAN said that a number of States parties had in fact asked to be allowed to combine two periodic reports in one and the Committee should perhaps at some point consider, through the Working Group on article 40, whether the periodicity was justified. For the time being, the principle of five-year periods was in force and was applied for the submission of periodic reports, and the Committee would retain that practice. If he heard no objections, he would take it that that was the decision of the Committee.

14. It was so decided.

Replies of States parties to comments made by the Committee after consideration of a periodic report

15. The CHAIRMAN said that the Government of Senegal had sent a reply to the Committee's comments on the third periodic report of Senegal, considered in

October 1992. Given that the Committee had adopted the practice of including in its annual report the comments that it formulated in writing by way of conclusion for each of the various periodic reports considered, it might perhaps be fair also to include in the annual report the reply sent by the State party to those comments, when there was one, as in the current case of Senegal. The Bureau would like to hear the opinion of the members of the Committee on that point.

16. Mrs. HIGGINS said she was not in favour of including in the annual report the text of a reply to the Committee's comments, because that might lead to a practice in which the State party would have the last word. In her opinion, it sufficed to mention that the State party had sent a reply to the Committee's comments, to indicate the symbol of the document so that all interested persons could acquaint themselves with it and to send a note thanking the State party.

17. Mr. LALLAH expressed the opinion that it was preferable to examine the reply of Senegal when considering its next periodic report. The consideration of that report and the Committee's written comments would be covered in full by the annual report of the Committee, which would not be the case for the report that the Committee would submit to the next session of the General Assembly.

18. Mrs. EVATT objected that, in its reply, the Government of Senegal had referred to a factual mistake that the Committee should not allow to stand. At issue was a correction concerning a fact, not an interpretation: contrary to what appeared in the Committee's comments, a state of emergency had not been declared in the south of the country.

19. Mr. EL SHAFEI said he thought that the Committee should take the medium-term approach. The reply of the State party would be examined when the next periodic report was considered, but in the immediate future it would be worth mentioning very briefly in the annual report of the Committee that the Government of the State party had sent a reply which would be appended to the report.

20. Mr. SADI said that the Committee should give careful thought to how it handled the replies of States parties and should decide upon a procedure that was valid in all cases. Not all States would reply, and the Committee must be able to apply a rule. As long as it had not set a rule, it was preferable to refrain from taking any decision.

21. Miss CHANET said that the question was of vital importance and deserved the greatest attention. Once the Committee had decided to make comments in writing at the end of the consideration of a periodic report, it was natural that States should think that they had the right to reply. The same procedure must be adopted for all States. It was just as impossible to prevent States from replying as it was to ignore their replies, but it could be argued that the Committee must also reply to that reply, because it might not be a good idea to let the State party have the last word. That was a very sensitive issue that must be discussed further. For the time being, the case before the Committee was an isolated one and the best solution would be to mention in the annual report that Senegal had sent a reply and to give its symbol. The

document should not be annexed to the report, and the reference to the symbol would enable the reader to find the document if desired. In so doing, the Committee would avoid creating a precedent that might well put it in a difficult position in the future.

22. Mr. POCAR suggested that the Committee should follow the same practice as in the case of observations sent to it by States parties following the views adopted on communications concerning them; the Committee did not publish the texts but merely indicated that it had received "observations" from the State party, to employ the term used in article 40, paragraph 5.

23. Mr. PRADO VALLEJO agreed with the previous two speakers and added that it would be very dangerous to publish in an annual report that would be read by the world community the observations of certain States parties which might have been waiting for just that opportunity to challenge the words of the Committee. To avoid a dangerous precedent, careful thought must be given to the question in advance, and it would be best to adopt the solution of simply noting in the annual report that a given State had sent observations.

24. Mr. NDIAYE said that the Committee found itself in a situation that it had not foreseen. First of all, publishing in the annual report the replies of States parties to its own written comments would have considerable financial implications. Most important, however, was that international opinion would not know who to believe. It might perhaps be best for the Committee simply to decide that States should reply to its questions in their subsequent reports.

25. It was still necessary to resolve the difficult question that had arisen with the reply received from Senegal, which drew attention to a factual error. It would seem that the Committee should correct it in its annual report.

26. Mr. AGUILAR URBINA said he was firmly opposed to publishing in the annual report of the Committee observations received from a State party on the Committee's final written comments. Firstly, the report would become too voluminous and thus difficult to consult and too costly to publish. Secondly, and above all, States parties must not be allowed to have the last word. It would suffice to indicate that observations on the Committee's comments had been received and to give the document's symbol.

27. Mrs. HIGGINS agreed with Mr. Ndiaye's suggestion and said that the Committee should not evade the problem of correcting a purely factual mistake. She proposed that, when such an error was drawn to the Committee's attention, the rapporteur in charge of drafting the comments on the country concerned should verify, with the Secretariat's assistance, whether an error had in fact been made and, if so, correct it in the Committee's final written comments as they appeared in the annual report. Needless to say, the question did not arise in the case of differences of opinion, but solely in the case of a verifiable factual error.

28. Miss CHANET said she felt considerable hesitation about the idea of correcting possible mistakes, an approach which would appear to leave the door open to all kinds of manipulation. It was sometimes difficult to know whether an obvious factual error or a misinterpretation was involved, and the

Committee would have to base itself on the assertions of the State party. Dishonest States might easily claim a factual error in order to make a completely different assertion. On the rather rare occasions when the Committee was mistaken, the truth could easily be re-established during consideration of the next report of the State party concerned. The document symbol would enable the reader to consult the State party's reply.

29. Mrs. EVATT stressed that a verifiable factual error, and not a minor mistake or difference of opinion, must be corrected if it might mislead the reader. In such a case, it was enough to indicate that the State party had sent observations on the Committee's final written comments, to specify the document's symbol and to say that the State party drew attention to a certain fact, without raising the question whether the State party was right.

30. The CHAIRMAN suggested indicating in a footnote to the Committee's final written comments on the consideration of the report of the State party that the latter had sent observations which appeared in a document whose symbol was given.

31. The procedure to follow in the event of a mistake was a sensitive matter that must be discussed less hurriedly, and he suggested that the Working Group on Article 40 which would be set up for the next session should be asked to consider the question.

32. It was so decided.

33. The CHAIRMAN recalled that at the current session the Committee had considered the periodic reports of Bulgaria, Egypt and the Islamic Republic of Iran, all three having been submitted late. The Bureau had thus had to revise the due date for the next report, and it had been decided to set a deadline of 31 December 1994.

34. At the next session, the Committee would consider the third periodic reports of Japan, Norway and Romania, the second periodic reports of Iceland and the Libyan Arab Jamahiriya and the initial report of Malta. It would have the periodic reports of Mexico and Cameroon in reserve.

35. The Bureau had also decided upon the membership of the working groups for the forty-ninth session. The Working Group on Communications would comprise Mr. Aguilar Urbina, Mrs. Evatt, Mr. Herndl, Mr. Mavrommatis (in his capacity as special rapporteur on follow-up of views) and Mr. Ndiaye. The Working Group on Article 40 would be composed of Mr. Dimitrijevic, Mr. Lallah (in his capacity as special rapporteur responsible for drafting a general comment on article 27), Mr. Prado Vallejo and Mr. Sadi.

36. He recalled that the Committee had adopted the general comment on article 18 after a long debate and that Mr. Lallah had begun drafting a general comment on article 27. Given that the Committee had a preliminary draft for article 25, prepared by the previous working group, the Bureau recommended that the task should be taken over by Mrs. Evatt who, if she wished, could submit a new draft or an outline for the forty-ninth session. Mrs. Higgins could be entrusted with the question of reservations to the Covenant.

37. If there were no objections, he would take it that the Committee approved the Bureau's recommendations.

38. It was so decided.

39. Mrs. KLEIN (Centre for Human Rights) recalled that the Committee had asked to meet for an additional week devoted exclusively to communications. She had made a tentative approach to the Conference Service, which proposed to add a week to the 1994 summer session, that would thus be extended until 5 August.

40. Replying to a suggestion made by Mrs. EVATT, the CHAIRMAN said that the Working Group on Article 40 set up for the next session might consider the final document of the World Conference on Human Rights held in Vienna in June 1993, certain aspects of which were relevant to the Committee and its relations with other human rights bodies.

41. Mrs. HIGGINS said that she wished to make a proposal which, if adopted, might be applied as from the next session: that the list of issues to be taken up in connection with the consideration of the report of a State party should systematically begin with a section in which a State party would be asked what measures it had taken to give effect to specific recommendations concerning it made in the Committee's report.

42. Mr. POCAR said that, although he was not opposed in principle to the idea of asking a State party what action it had taken on the Committee's recommendations, he nevertheless thought that the proposal by Mrs. Higgins had few advantages; in his view, the matter should be discussed further at a later date.

43. Miss CHANET said that it was her understanding that it had not been decided to consider the document on the methods of work of the Committee (M/CCPR/1993/19), which contained a number of proposals that could likewise be adopted rapidly. The Committee must organize its work rationally and she therefore proposed discussing the proposal of Mrs. Higgins when document M/CCPR/1993/19 was considered.

44. The CHAIRMAN suggested that the Committee should try to devote a little time at the end of the current session to considering the document in question and should take up Mrs. Higgins' proposal in that framework.

45. It was so decided.

The public meeting rose at 11.35 a.m.